IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1691 OF 1998

Hemant Popatrao Kadam .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for petitioner

Mr.C.R.Sonawane, A.G.P. for State.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 18TH OCTOBER 2004.

P.C.

1. Heard Advocates.

2. The learned Counsel appearing for the petitioner submitted that in the light of the judgement of this Court in Pandurang Rangnath Chavan petitioner Vs. State of Maharashtra and

Ors. 1998(2) Mh.L.J. 806 Chandrakant Bajirao Shinde Vs. State of Maharashtra and Ors: 2003(2) Mah.L.J. 471 and unreported judgement of this Court in Writ Petition No.2745 of 1988 (Raviprakash Babulalsing Parmar Vs. State of Maharashtra and Ors) decided on 28th July 2003, the impugned order of the caste scrutiny committee dated 10th February 1998 cannot be sustained. The scrutiny committee observed in its order as under:-

> "So far the word "Thakur" is concerned, it is to be pointed out that the Thakur word is included in the various categories as follows:-
>
> i) Thakar/Thakur is (inluding Ka-Thaker/ Thakur. Ma-Thakar/ Thakur) quoted at Sr.No.44 in the Scheduled Tribe List.
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> ii) Thakur (including Grambhat, Brahmabhat) is included in the list of O.B.C. at Sr.No.200. It is a part of

Balutedar systems in the village society.

iii) Thakur is also advance caste in indu society such as Rajput Thakurs, Kashatriya Thakurs, Vaishya Thakurs, Pardeshi Thakurs and Sindhi Thakur.

In view of the above discussion, it is very difficult to determine on documentary evidences that the candidate belongs to either Thakur caste of Thakur scheduled Tribe."

3. We may quote with approval the following passage from the judgement of the Division bench of this Court in Chandrakant (supra) wherein Division Bench has an occasion to consider an identical issue which is posed before us.

"4. The Constitution (Scheduled Tribes) Order, 1950 was issued onSeptember, 1950 in exercise of powers conferred upon the President of India by clause (1) of Article 342 of the Constitution of India. In the schedule

appended to the said order, admittedly Thakar was not notified as a Schedule Tribe within the then State of Bombay. Thereafter by the Scheduled caste and scheduled Tribes Orders (Amendment) Act, 1956, the Presidential Order, 1950 was amended and in some of the districts of the State of Bombay Scheduled Tribes Thakur or Thakar including - Ka Thakur, Ka Thakar, Ma Thakur, Ma Thakar were included. Thereafter with effect from 18.9.1976, the Scheduled Caste and Scheduled Tribes Orders (Amendment) Act, 1976 came into force amongst other amending the Presidential Order i.e. Constitution Scheduled Tribes Orders, 1950, Entry No.44 of the Schedule. Part IX Maharashtra thereof notifies "Thakur", "Thakar", "Ka Thakur", "Ka Thakar", "Ma Thakur" "Ma Thakar" without any area restriction being scheduled Tribe within the entire State of Maharashtra.

8. The Constitution Bench of the Supreme Court recently had an occasion to

consider inter alia this aspect in State of Maharashtra Vs. Milind and Ors. 2001(1) Mh.L.J. (SC) 1 - (2001 1 SCC 4. In paragraphs 15, 28 and 36(1) of the report, it was ruled thus:-

15. Thus it is clear that States have no power or the Government of the day in a State is relieved from the pressure or burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should

not expand jurisdiction to deal with the question as to whether a particular caste, sub-caste; a group or part of tribe or sub-tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularly so when in clause (2) of the said Article, it is expressly stated that the said order cannot be amended or varied except by law made by Parliament. The power to include or exclude amend or alter Presidential Order is expressly and conclusively conferred on and vested with Parliament and that too by making a law in that regard. The President had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular caste or tribe was to be included in the Presidential Order. If the said orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a

particular caste or tribe is to be included or excluded by law to be made by Paliament. Allowing the State Governments or Courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the schedule of the Presidential order, when it is not specifically included, may lead to problems, in order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders. Neither the State Government nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or tribe is included in Presidential orders in one entry on the other although they are not expressly and specifically included. A

court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within Presidential Orders when it is not so expressly included.

28. Being in respectful agreement we reaffirm the ratio of the two Constitution Bench judgements aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is not so expressly or specifically included. Hence, we answer Question 1 in

the negative.

> 36(1) It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribes or tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950".

In all these four writ petitions, it is not disputed before us that the committee has recorded a finding that the petitioners have established that they belong to "Thakur" but the Committee on erroneous assumption proceeded that Thakur Community is being different than "Ka Thakur and Ma Thakur". We are unable to appreciate the approach of the learned members of the Committee in analysing the issue posed before it. In view of the judgements of this Court referred to above that the Committee has no competence or authority to go into questions whether the petitioner belong to Thakur higher

caste and or it has done in the present case. We are in respectful agreement with all three judgements of the court referred to by the learned Counsel for the petitioners. We also approved the view taken by the learned Judges of the Division Bench in Raviprakash unreported. Though the learned Judges rendered separate but concurring judgement, we endorse the view taken by our learned brother Kochar, J. who was the member of the Division Bench who has decided Raviprakash's case (supra). In view of the above said judgements, to which we respectfully agree and adopt the same reasons, the orders challenged in these petitions are required to be set aside. Accordingly, impugned orders passed by the Scrutiny Committee in all these writ petitions is set aside, Rule and absolute. No order as to costs.

4. In the present case it is not disputed before us that the Committee has recorded a finding that the petitioner belongs to "Thakur" but the Committee on erroneous assumption proceeded to hold that "Thakur Community" is different than "Thakar Scheduled Tribe". In the

light of the decision of this Court in the case of Chandrakant Bajirao Shinde Vs. State of Maharashtra and Others (Supra), the Scrutiny Committee was not justified in proceeding with the inquiry on the basis of socio-cultural traits, affinity test, and ethnic linkage to find whether the petitioner belongs to Thakur Scheduled Tribe when admittedly the documents produced by him show in unequivocal terms that his caste was Thakur". We, therefore, quash and set aside the order of the Scrutiny Committee. Respondents are directed to issue the caste validity cerificate to the petitioner as belonging to Thakur scheduled Tribe within a period of two months from today.

5. Rule is made absolute accordingly. No order as to costs.

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